Chris Jeremy Lai Zhe Ahn v Ketua Pengarah Jabatan Pendaftaran Negara

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24–11–02/2022
AMARJEET SINGH J
26 DECEMBER 2022

Civil Procedure — Declaration — Identity card — Plaintiff sought declaration for change of name in identity card — Whether plaintiff entitled to declaration sought for — National Registration Regulations 1990 regs 4 & 14

The plaintiff filed this originating summons seeking a declaration that his name in his identity card be changed from Chris Jeremy Lai Zhe Ahn to Chris Jeremy Ser Zhe Ahn and a consequential order that the Registration Department gave effect to the order once it was made. The plaintiff's biological father and mother were granted a divorced when he was four years old and since then he lived with his mother. The plaintiff and his father stopped communicating with each other when he was eight years old. Subsequently, the plaintiff's mother married one Ser Chai Seong who moved in and lives with the plaintiff's mother and the plaintiff. The plaintiff had received love and affection from his stepfather who treated him like his own son. The plaintiff had renounced his father's name and rejected any inheritance from his father and had taken his stepfather's name 'Ser' as his father's name. The plaintiff thus applied under reg 14 of the National Registration Regulations 1990 for a change in his name ie to show that he went by the name Chris Jeremy Ser Zhe Ahn. A panel established by the Registration Department refused the application made by the plaintiff. Hence, this originating summons filed by the plaintiff.

Held, granting the declaration and consequential relief sought:

(1) The reason for the refusal of the application was misconceived in law. The plaintiff was not applying to change his particulars of his birth certificate. Therefore, s 13A of the Births and Deaths Registration Act 1957 or any other section therein was not relevant. The rejection of the plaintiff's application by the defendant albeit by the panel was therefore based on a fallacy. The defendant could not now rely on a new reason in submissions with regard to the National Registration Regulations 1990 unless the application of the plaintiff was something prohibited by law. The declaration sought by the plaintiff was a declaration of the plaintiff's status or name which the plaintiff was entitled to in law. There was nothing in the case at hand that barred the plaintiff in seeking a change of

his name in his identity card. So long as his reason was not illegal, the defendant had to give effect to the change in name sought where all the requirements of reg 14 read with reg 4 of the National Registration Regulations 1990 were met. The plaintiff was in the circumstances entitled in law to seek a declaration of his right for a change in name by way of originating summons (see paras 7–12).

[Bahasa Malaysia summary

Plaintif memfailkan saman pemula ini untuk mendapatkan pengisytiharan bahawa namanya dalam kad pengenalannya ditukar daripada Chris Jeremy Lai Zhe Ahn kepada Chris Jeremy Ser Zhe Ahn dan perintah berbangkit supaya Jabatan Pendaftaran melaksanakan perintah itu sebaik sahaja perintah itu dibuat. Bapa dan ibu kandung plaintif telah bercerai semasa dia berumur empat tahun dan sejak itu dia tinggal bersama ibunya. Plaintif dan bapanya berhenti berkomunikasi antara satu sama lain ketika dia berumur lapan tahun. Selepas itu, ibu plaintif berkahwin dengan seorang Ser Chai Seong yang berpindah dan tinggal bersama ibu plaintif dan plaintif. Plaintif telah mendapat kasih sayang dan perhatian daripada bapa tirinya yang melayannya seperti anaknya sendiri. Plaintif telah meninggalkan nama bapanya dan menolak sebarang warisan daripada bapanya dan telah mengambil nama bapa tirinya 'Ser' sebagai nama bapanya. Oleh itu, plaintif memohon di bawah peraturan 14 Peraturan-Peraturan Pendaftaran Negara 1990 untuk menukar namanya iaitu untuk menunjukkan bahawa dia menggunakan nama Chris Jeremy Ser Zhe Ahn. Panel yang ditubuhkan oleh Jabatan Pendaftaran menolak permohonan yang dibuat oleh plaintif. Oleh itu, saman pemula ini difailkan oleh plaintif.

Diputuskan, membenarkan deklarasi dan relif berbangkit yang dipohon:

(1) Sebab penolakan permohonan itu adalah salah sangka di sisi undang-undang. Plaintif tidak memohon untuk menukar butiran sijil kelahirannya. Oleh itu, s 13A Akta Pendaftaran Kelahiran dan Kematian 1957 atau mana-mana seksyen lain di dalamnya tidak berkaitan. Oleh itu, penolakan permohonan plaintif oleh defendan walaupun oleh panel adalah berdasarkan kekeliruan. Defendan kini tidak boleh bergantung kepada alasan baharu dalam penghujahan berkenaan dengan Peraturan-Peraturan Pendaftaran Negara 1990 melainkan permohonan plaintif adalah sesuatu yang dilarang oleh undang-undang. Pengisytiharan yang dipohon oleh plaintif adalah pengisytiharan status atau nama plaintif yang berhak diterima oleh plaintif dalam undang-undang. Tiada apa-apa dalam kes ini yang menghalang plaintif untuk meminta pertukaran namanya dalam kad pengenalannya. Selagi alasannya tidak menyalahi undang-undang, defendan terpaksa menguatkuasakan pertukaran nama yang dipohon di mana semua keperluan peraturan 14 yang dibacakan dengan peraturan 4 Peraturan

Pendaftaran Negara 1990 telah dipenuhi. Plaintif dalam keadaan tersebut berhak di sisi undang-undang untuk mendapatkan pengisytiharan haknya untuk menukar nama melalui saman pemula (lihat perenggan 7–12).] A

Cases referred to B

Diesel SPA v Bontton Sdn Bhd [2021] 4 MLJ 32, CA (folld)
YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24, FC (refd)

Legislation referred to C

Births and Deaths Registration Act 1957 s 13A
National Registration Act 1959 s 6
National Registration Regulations 1990 regs 4, 14, 14(6)
Specific Relief Act 1950 s 41

D

Lok Hon Jet (with Heng Aik Sze) (Rozlan Khuen) for the plaintiff.
Na'ilah Ilhani bt Shamsulbahri (Federal Counsel, Attorney General's Chambers) for the defendant.

Amarjeet Singh J: E

INTRODUCTION

[1] The plaintiff filed this originating summons seeking a declaration that his name in his identity card be changed from Chris Jeremy Lai Zhe Ahn to Chris Jeremy Ser Zhe Ahn and a consequential order that the Registration Department gives effect to the order once it is made. F

[2] On 21 September 2022, I allowed the originating summons. I now give my reasons for the decision. G

BACKGROUND

[3] Arnold Aiden Lai Keen Jung is the biological father of the plaintiff. His mother, Eunice Tan Yu-Ti and his father were granted a divorce on 5 November 2007 when he was four years old. The plaintiff since then lived and continues to live with his mother. The plaintiff and his father stopped communicating with each other in 2010. The plaintiff was then eight years old. On 9 March 2014, his mother married Ser Chai Seong who moved in and lives with her and the plaintiff at B4–16–2, Urbane Tower, Solaris Dutamas, Jalan Dutamas 1, Kuala Lumpur. H I

[4] The divorce affected the plaintiff's childhood as he was brought up without the love, affection and care of his father. The relationship between

father and son has deteriorated to the extent that there is nothing left. They are so estranged except by blood and name. On the other hand, the plaintiff has received love and affection from his stepfather who treats him like his own son. The plaintiff has renounced his father's name and rejected any inheritance from his father and has taken his stepfather's name 'Ser' as his father's name, his own reasons as it makes him feel inclusive as a family.

[5] So, he applied under reg 14 of the National Registration Regulations 1990 for a change in his name ie to show that he goes by the name Chris Jeremy Ser Zhe Ahn. According to the affidavit of the legal advisor of the department a panel established by the department refused the application made by the plaintiff. No reasons were given by the said panel for refusing the application. As a result of the refusal the plaintiff filed the instant originating summons seeking a declaration with regards to his name he wants to go by.

ANALYSIS AND DECISION

[6] The reason for the refusal of the application appears to be stated by the legal advisor of the department who affirmed the affidavit in reply for the defendant. The reason is stated in the following paragraphs of the affidavit in reply as follows:

> 11. Saya sesungguhnya menyatakan bahawa nama keluarga yang didaftarkan hendaklah nama bapa kandung dan ini adalah selaras dengan peruntukkan seksyen 13A Akta Pendaftaran Kelahiran dan Kematian 1957 [Akta 299].
>
> 12. Saya sesungguhnya percaya dan menyatakan bahawa permohonan plaintif untuk menukar nama adalah tidak dibenarkan dalam peruntukkan undang-undang yang dinyatakan di atas dan tidak memenuhi syarat-syarat yang ditetapkan dalam Akta 299.

[7] The reason given by the legal advisor of the department is misconceived in law. The plaintiff was not applying to change his particulars of his birth certificate. Therefore, s 13A of the Births and Deaths Registration Act 1957 or any other section therein is not relevant. The Births and Deaths Registration Act 1957 concerns the registrations for births or deaths and not the identity card of a citizen. The identity card of a citizen is governed by the National Registration Act 1959.

[8] The rejection of the plaintiff's application by the defendant albeit by the panel was therefore based on a fallacy. The defendant cannot now rely on a new reason in submissions with regard to the National Registration Regulations 1990 unless the application of the plaintiff is something prohibited by law. The reliance of such new reason except for illegality would be in bad faith. The defendant is in charge of the National Registration Department and must carry out his functions in good faith. The different reason being proffered now in the

written submissions of the defendant is obviously an afterthought and I unhesitatingly disregard the same. In any event, it suffices to say the new reason is not something prohibited by law.

[9] I return to the declaration sought by the plaintiff. This is a declaration of the plaintiff's status or name which the plaintiff is entitled to in law. The law provides that if a citizen is seeking to register his change of name such application must be made pursuant to reg 14 of the National Registration Regulations 1990 (made under s 6 of the National Registration Act 1959). The relevant provisions of reg 14 provides as follows:

> (1) A person registered under these Regulations who —
>
> (a) changes his name;
>
> (b) ...
>
> shall forthwith report the fact to the nearest registration office and apply for a replacement identity card with the correct particulars.
>
> (2) Any person registered under these Regulations who applies to change his name under subregulation (1) shall submit to the registration officer a statutory declaration which —
>
> (a) certifies the fact that he has absolutely renounced and abandoned the use of his former name and in lieu thereof has assumed a new name; and
>
> (b) contains the reasons of such change of name, other than a conversion of religion.

[10] There is nothing in the case at hand that bars the plaintiff in seeking a change of his name in his identity card. The so-called panel cannot stop the plaintiff from doing so. The function is purely administrative as only the compliance of the regulations is required. There is no discretion or power involved in this exercise unless the change in name is prohibited by the regulations. All that person needs to do when he changes his name is to inform the department and apply a change in name according to reg 14 read with reg 4 of the National Registration Regulations 1990 which read as follows:

> Any person who —
>
> (a) ...
>
> (b) ...
>
> (c) applies for a replacement identity card under regulation 13 or 14, shall —
>
> (aa) forward two copies of his photograph to the registration officer or permit the registration officer to take his photograph, as the case may be;
>
> (bb) submit to all such steps as may be reasonably necessary —

(i) for the taking of his photograph; and

(ii) for the taking and recording of his fingerprints impressions, in accordance with any instructions given by the registration officer; and

(cc) give the following particulars to the registration officer:

(i) his full name as appearing in his Certificate of Birth or such other document, and if he is known by different names, each of such names in full;

(ii) his previous identity card number, if any;

(iii) the full address of his place of residence within Malaysia;

(iv) his race;

(v) his religion;

(vi) his place of birth;

(vii) his date of birth and sex;

(viii) his physical abnormalities, if any;

(ix) his citizenship status, whether a citizen of Malaysia or a citizen of any other country;

(x) particulars of his driving licence, if any;

(xi) particulars of his passport, if any;

(xii) any other particulars as the registration officer may generally or in any particular case consider necessary for the purpose of identification; and

(xiii) any other documentary evidence as the registration officer may consider necessary to support the accuracy of any particulars submitted.

[11] The plaintiff has sworn a statutory declaration renouncing the use of the name Chris Jeremy Lai Zhe Ahn. His reason is that he has disowned his biological father. Whatever the reason is, so long as it is not illegal, the defendant has to give effect to the change in name sought where all the requirements of reg 14 read with reg 4 of the National Registration Regulations 1990 are met. Regulation 14(6) raised in the defendant's submissions is clearly not applicable in the case at hand. I will say nothing more on it.

[12] The plaintiff is in the circumstances entitled in law to seek a declaration of his right for a change in name by way of originating summons. The plaintiff has already renounced his biological father's name and goes by the name of Chris Jeremy Ser Zhe Ahn. In such circumstances the plaintiff is not restricted to the remedy of judicial review. A declaration of his right is the best and

efficacious remedy under s 41 of the Specific Relief Act 1950 which provides as follows:

> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief.

[13] If authority is needed, one only need to refer to the Federal Court case of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24 where it was held:

> [26] However, whatever restriction there may be on the use of O 15 r 16 it will not apply where a person seeks to assert, inter alia, his rights to a legal status. This is statutorily recognised in the form of s 41 which read as follows: Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

[14] Further, the Court of Appeal case of *Diesel SPA v Bontton Sdn Bhd* [2021] 4 MLJ 32 is instructive. There it was held that:

> The right to use one's own name in one's goods was a legal entitlement or a right in law which satisfied the meaning of the term 'legal character' in s 41 of the SRA since all that was required was that the character, nature, status or position was one that was recognised in law. Not only had the appellant more than satisfactorily met the conditions in s 40(1)(a) of the TMA and s 41 of the SRA, it was in the interests of justice and fairness that the appellant be entitled to use its own name in its own goods and be granted the declaration of non-infringement (see paras 145–146).

[15] In the circumstances, the plaintiff is allowed to change his name in accordance with the said regulations and I so grant the declaration and consequential relief sought.

Declaration and consequential relief sought granted.

Reported by Nabilah Syahida Abdullah Salleh